

REMARKS

Reconsideration and further examination of the subject patent application in light of the present Amendment and Remarks is respectfully requested.

Claims 48-77 are currently pending in the application. Claims 48-77 stand rejected. Claims 56-59 and 68-71 have been indicated as allowable, but objected to as being dependent upon a rejected base claim.

Rejections under 35 U.S.C. §103

Claims 48-51, 60-63 and 72 stand rejected under 35 U.S.C. §103(a) as being obvious over U.S. Pat. No. 5,730,013 to Huang in view of U.S. Pat. No. 5,819,917 to Nicholson. Applicant respectfully traverses this rejection.

It is noted first that independent claims 48, 60 and 72 are limited to a flashlight. In contrast, Huang is directed to a “KEY STRUCTURE WITH ILLUMINATION FUNCTION” (Huang, Title). Under Huang, “a primary object of the present invention to provide a key structure with illumination function” (Huang, col. 1, lines 24-25). One of the advantages that Huang specifically provides and that differentiates the “key structure with illuminating function” from a flashlight is that “It is troublesome to carry a flashlight or other light emitting device for unlocking the lock” (Huang, col. 1, lines 19-21).

As is well known to those of skill in the art, “Flashlights are used for a wide variety of purposes” (specification, page 1, line 14). In contrast, the illumination function of Huang is used solely to “illuminate the circumference of the key hole” (Huang, col. 1, line 34) and then

only “so as to avoid trouble in unlocking the lock” (Huang, col. 2, line 56).

As would also be well known to those of skill in the art, a flashlight must have sufficient illuminating power to “illuminate dark alleys or stairwells” (specification, page 1, line 17). In contrast, Huang has only enough illuminating power “when getting close to the key hole” (Huang, col. 2, line 54). In this regard, the claimed flashlight would be structurally different than Huang because even if it were to be used with a key and lock it would illuminate the entire lock, not just the circumference of the hole.

Since Huang merely provides an illuminating function for a key, Huang does not and could not function as a flashlight, as such term is used in the context of the claimed invention. Further, since Huang is specifically directed to a key structure, Huang is simply not relevant to the claimed invention.

Nicholson also fails in this regard. For example, Nicholson is directed to “An accessory 10 for attachment to a flashlight (F)” (Nicholson, Abstract, line 1).

Further, Nicholson explicitly states that “the housing and end cap are available in a variety of colors which may complement or contrast with each other, or with the flashlight” (Nicholson, col. 3, lines 24-26). Since Nicholson explicitly refers to the accessory and not to the flashlight, Nicholson provides no teaching at all with regard to the use of a plurality of colors on a flashlight.

In addition, Nicholson is directed to housings and end caps with complementary or contrasting colors. The use of complementary or contrasting colors among housings and end caps is not the same as a plurality of colors on the same element.

Further, “it is impermissible within the framework of section 103 to pick and choose from

any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to a full appreciation of what such reference fairly suggests to one of ordinary skill in the art” (Bausch & Lomb., Inc. v. Barnes-Hind/Hydrocurve, Inc., 796 F.2d 443 (Fed. Cir. 1986). Huang is directed to a key structure with illuminating function, not to flashlights. Since the primary function of Huang is keys and with means of using keys, there would be no reason to look to Huang to develop a better flashlight.

Nicholson is directed to an accessory device to be used in conjunction with a flashlight. Using different colors on an accessory to a flashlight in no way implicates the flashlight itself or the Huang key structure with illuminating function.

Since Huang is directed to a key structure with illuminating function and Nicholson to flashlight accessories, there would be no reason to combine the references in the manner proposed by the Examiner without the benefit of hindsight analysis. Since there would be no reason to make the combination proposed by the Examiner, the rejections are believed to be improper and should be withdrawn.

Double Patenting Rejections

Claims 48-55, 60-67 and 72-77 have been rejected under the judicially created doctrine of obviousness type double patenting. Enclosed herewith is a terminal disclaimer obviating the double patent rejections.

Closing Remarks

For the foregoing reasons, applicant submits that the subject application is in condition

for allowance and earnestly solicits an early Notice of Allowance. Should the Primary Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, the Primary Examiner is respectfully requested to call the undersigned at the below-listed number.

The Commissioner is hereby authorized to charge any additional fee which may be required for this application under 37 C.F.R. §§ 1.16-1.18, including but not limited to the issue fee, or credit any overpayment, to Deposit Account No. 23-0920. Should no proper amount be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 23-0920. A duplicate copy of this sheet(s) is enclosed.

Respectfully submitted,

WELSH & KATZ, LTD.

By

A handwritten signature in black ink, appearing to read 'Jon P. Christensen', with a long horizontal flourish extending to the right.

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October 6, 2004
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